No. 559.

FILED
JAN 8 1893
JAMES H. McKENNEY,
CLERK

UNITED STATES OF AMERICA,

IN THE SUPREME COURT.

S. OTHO WILSON, PLAINTIFF IN ERROR,

versus

THE STATE OF NORTH CAROLINA, BY Z. V. WALSER, ATTORNEY-GENERAL, ON THE RELATION OF JOHN H. PEARSON, DEFENDANT IN ERROR.

To the Honorable the Supreme Court of the United States:

The petition of S. Otho Wilson, plaintiff in error in this cause, respectfully showeth—

1. That there is involved in this action a contest over the office of Railroad Commissioner for the State of North Carolina.

2. That the Governor of North Carolina undertook to suspend your petitioner from his said office and fill his place with the relator, John H. Pearson; that upon your petitioner's refusal to surrender his office upon the action of the Governor—which he considered and still considers illegal—the present action, in the nature of *quo warranto*, was brought. That upon the trial in the Superior Court of Wake County the issues tendered by your petitioner were excluded, and the Court gave judgment for the plaintiff. Thereupon your petitioner appealed, and a *supersedeas* bond was filed and accepted, and your petitioner continued to discharge the duties of his office.

3. That judgment in the Supreme Court of North Carolina was rendered about 4.30 o'clock p. m. on the 23d day of December, 1897; that a writ of possession was issued to the Sheriff of Wake County at 5.30 o'clock on said day, commanding the said Sheriff to eject your petitioner from the rooms of the Railroad Commission and to put the relator in possession thereof and of the books and papers of said office, and to make return to the February Term, 1898, of said Court; that said writ of possession has never been executed.

4. That the counsel of your petitioner sued out a writ of error, returnable to this Court, which was issued by the Clerk of the United States Circuit Court for the Eastern District of North Carolina, and was duly allowed by the Chief Justice of the Supreme Court of North Carolina on the said 23d day of December, 1897. The said counsel duly tendered a good and sufficient bond, conditioned as required by law in cases of *supersedeas*, and the Chief Justice of the said State Supreme Court duly approved the same and signed the citation on said 23d day of December, 1897. Thereupon, at 7.10 o'clock p. m. on said day, the said writ of error, with the petition therefor, and the assignment of errors and the said citation and bond, were filed in the Clerk's office of the said Supreme Court, and at the same time copies of said writ of error were lodged in said Clerk's office for the State of North Carolina and for the relator, Pearson, and for Z. V. Walser, Attorney-General. A few minutes thereafter one of your petitioner's counsel saw W. H. Day, Esq., acting as counsel for the relator, and told him that the *supersedeas* had been granted. Whereupon the said Day went into the said Clerk's office and asked to see the bond, which was at once handed to him, and he examined the same. The Railroad Commission rooms and the Supreme Court Clerk's office are in adjoining buildings, about ten or twenty feet apart, and the Clerk of the Supreme Court lives about two hundred yards off.

On information and belief, the Clerk of the Supreme Court, in a few minutes after the lodging of said copies of the writ of error, sent by his deputy the copy lodged for the State of North Carolina to Daniel L. Russell, Governor of said State, and it was promptly delivered to him. The said deputy was unable to find the said Pearson and Caldwell, the latter being engaged in a similar contest with Jas. W. Wilson, but showed the copies for them to W. H. Day., Esq., their counsel, and he read the same several hours prior to the forcible entrance into said rooms, hereinafter set forth.

Further, on information and belief, your petitioner says that the said Governor, after the copy of the writ of error was handed him and with full knowledge of the *supersedeas*, sent for a locksmith and sent him with the said Caldwell and Pearson, with instructions to pick the locks on the doors of said Commission rooms, and open the doors. Said locksmith did so, and said Pearson and Caldwell at once entered and took possession about 11.30 o'clock p. m., on said 23d December, 1897, and had new locks put on and have since remained in possession.

On information and belief, the said Pearson and Caldwell well knew of the action of the Chief Justice in the premises, and took possession as aforesaid after conference with the Governor. The home of their counsel, Mr. Day, is in about fifty yards of the said Commission rooms.

5. That on the morning of the 24th December, 1897, the said W. H. Day, Esq., as counsel for the relator, made a motion in open Court to set aside said *supersedeas;* and at the same time your petitioner made a motion that said execution or writ of possession be recalled on account of the *supersedeas*. Both motions were refused, and the Justice delivering the opinion warned all persons against interfering with the said Pearson and Caldwell and announced that they would be in contempt of the Supreme Court of the State if they molested or disturbed them in the office or the

discharge of the duties of the same. Since said time the said Pearson and Caldwell have begun to discharge the duties of the office, and have held a regular meeting for the transaction of businesss, and your petitioner is unable to assert his rights on account of the threat against him in the said opinion filed and which is here referred to for greater certainty.

6. Your petitioner has filed a full and complete transcript of the record of said case, and he prays that the same be referred to for a fuller statement of the facts of the controversy and the said proceedings.

Wherefore your petitioner prays that the said Pearson may be compelled to desist from the discharge of the duties of said office, and that the said rooms and books and papers of the office be restored to your petitioner; that the said Pearson be adjudged to be in contempt of this honorable Court, and that your petitioner be restored to his position; and for such other and further relief as may be just. And your petitioner will ever pray.

R. O. Burton,
Attorney for Petitioner.

United States of America,
Eastern District of North Carolina.

S. Otho Wilson, being duly sworn, says the foregoing petition is true, of his own knowledge, except as to allegations therein made on information and belief. As to those matters, he believes it to be true.

S. Otho Wilson.

Sworn to and subscribed before me, this 3d day of January, 1898.

[L. S.] N. J. Riddick,
Clerk U. S. Circuit Court Eastern District N. C.

IN THE SUPREME COURT OF THE UNITED STATES.

S. Otho Wilson, *Plaintiff in Error*,
versus
The State of North Carolina, by Z. V. Walser, on the relation of John H. Pearson, *Defendant in Error.* } *Notice.*

To Messrs. A. C. Avery and MacRae & Day, Attorneys for Defendant in Error, and John H. Pearson:

Take notice, that on the foregoing petition and affidavit I shall move before the Honorable, the Supreme Court of the United States, on Monday, January 17, 1898, or as soon thereafter as counsel can be heard—

1. That the relator, John H. Pearson, be attached for contempt, on account of his conduct in disregard of the *supersedeas* granted in this cause.

2. That he be commanded to desist from acting as Railroad Commissioner till the decision of this controversy; and in the meantime that he restore the plaintiff to the office and turn over to him the rooms of said Railroad Commission, with all the books, papers and property pertaining to said office.

3. That a writ of restitution be granted to restore said plaintiff in error to said office.

4. That a writ issue to the Sheriff of Wake County, commanding him to proceed no further with the writ of possession in his hands.

5. For such other and further relief as the nature of the case may require.

This January 6, 1898.

R. O. Burton,
Attorney for Plaintiff in Error.

No. 558.

Brief of Hill for P. E. 10 mo.

FILED.
FEB 14 1898
JAMES H. McKENNEY,
CLERK

No. 558.

SUPREME COURT OF THE UNITED STATES,

Filed Feb. 14, 1898.

OCTOBER TERM, 1897.

JAMES W. WILSON, PLAINTIFF IN ERROR,

versus

THE STATE OF NORTH CAROLINA ON THE RELATION OF L. C. CALDWELL, DEFENDANT IN ERROR.

Brief of Thomas N. Hill, of Counsel for Plaintiff in Error.

At the time when the defendant in error took forcible possession, the Supreme Court of the United States had acquired control.

Revised Statutes U. S., secs. 997, 998, 999, 1000, 1004, 1007.

There was strict compliance with these provisions. The writ of error and citation were issued and bond approved at the same time, and service of the writ was made on the day on which it was issued, December 23, 1897.

The *supersedeas* was perfected when the citation was signed, "as the security provided by law was given in its issuing." Sec. 1007. It was not necessary that the citation should be served. Ibid.

In Draper v. Davis, 102 U. S., 370, Chief Justice Waite, delivering the opinion of the Court, says:

"When the original bond of $1,000 was accepted by the Justice, and the citation signed, an appeal was allowed and security taken, which operated as a supersedeas. That transferred, the jurisdiction of the suit appealed to this Court. * * * The power of the Justice over the appeal and the security in the absence of fraud, was exhausted when he took the security and signed the citation. From that time the control of the *supersedeas*, as well as of the appeal, was transferred to this Court."

"A *supersedeas* is not obtained by virtue of any process issued by this Court, but it follows as a matter of law from a compliance by the appellant with the provisions of the act of Congress in that behalf."

Goddard v. Ordway, 94 U. S., 672.
Jerome v. McCarter, 21 Wall., 17.
United States v. Addison, 22 How., 174.

(This was a case in which a public officer sued out a writ of error and gave supersedeas bond.)

French v. Shoemaker, 12 Wall., 86.
O'Dowd v. Russell, 14 Wall., 402.
Commissioners v. Gorman, 19 Wall., 661.
Tel. v. Eyser, 19 Wall., 419.
Kitchin v. Randolph, 93 U. S., 86.
Mendenhall v. Hall, 134 U. S., 559.
Covington v. Keith, 121 U. S., 248.
Goodwin v. Fox, 120 U. S., 775.
Town of Danville v. Brown, 128 U. S., 523.

Citation not jurisdictional.

Evans v. Bank, 134 U. S., 330.
Richardson v. Green, 130 U. S., 104.
Hewitt v. Filbert, 116 U. S., 142.

The writ brings up the record and the citation the parties.

Kitchin v. Randolph, supra.

It would seem that the provision for delay of execution in section 1007 Rev. Stat, is broad enough to embrace judgments and decrees in State Courts, as well as in Courts of the United States, but there seems to be a conflict in the decisions in regard to this. It is, however, not a question of importance in this case, inasmuch as the writ of possession has never been executed.

In United States v. Addison, 22 How., 174, it was held that judgments of ouster in *quo warranto* is superceded by writ of error, bond, etc.

Judgment of ouster in State Court was suspended by appeal without *supersedeas* bond.

Hannon v. Commissioners, 89 N. C. R., 123.

Supersedeas bond provided for Acts North Carolina, 1885, Chap. 406, Sec. 2.

On the 24th December, 1897, the Supreme Court of North Carolina handed down an opinion, in which they say: "We are also of the opinion that the judgment of this Court, *ex propria vigore*, placed the relator in possession of the office at the time the judgment was filed. He having qualified, no process was necessary for that purpose. He is in full possession of the same, and entitled to exercise its duties and draw the salary thereto attached from the date of his appointment. The judgment took effect immediately upon being filed, and is not suspended by the subsequent writ of error, regular or irregular.

Foster v. Kansas, 112 U. S., 201.

This opinion was extra-judicial, for the reason that

when it was rendered the case was not within the jurisdiction of the Supreme Court of the State. The *supersedeas* was taken in accordance with the Acts of Congress, which are part of the supreme law of the land, and the Judges in every State are bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Constitution U. S., Art. 6, Sec. 2.

Whether the proceedings in error became operative as a *supersedeas* or not is a question solely for the consideration of the Supreme Court of the United States.

Ex-Parte, Chetwood, 165 U. S., 443.
Slaughter House cases, 10 Wall., 273.

In Foster v. Kansas, the person sought to be attached had entered upon the discharge of the duties of the office one day before the writ of error was filed in the Clerk's office. It was held therein that the judgment created a vacancy, but it was not held that the judgment put him into possession.

The Code of North Carolina lays down the rules in *quo warranto* to recover an office, in secs. 610, 611, 612.

"Sec. 610. In every such case judgment shall be rendered. * * * upon the right of the party so alleged to be entitled. * * *

Sec. 611. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to take upon himself the execution of the office."

There is nothing in the Act which professes to put him in actual possession. He has a right of possession. This position is strengthened by Sec. 1, Chap. 406, Acts N. C., 1885, which provides that when such judgment is recovered, "It shall be the duty of the Court to issue

a writ of mandamus, or other process in such action which may be necessary to carry such judgment into effect and to induct the party so entitled into said office."

The judgment of the Supreme Court of North Carolina (printed record, pages 41 and 42), conforms to said Acts.

The defendant in error is in contempt of this Court. His forcible entrance was disobedience or resistance to the writ.

Rev. Stat. U. S., Sec. 725.
Natal v. Louisiana, 123 U. S., 516.

In re Chiles, 22 Wall., 157, the Court says: "The exercise of this power (to punish for contempt) has a twofold aspect—first the proper punishment of the guilty party for his disrespect to the Court or its order, and the second to compel his performance of same act or duty required of him by the Court, which he refuses to perform."

In this case Chiles disobeyed an order for injunction. It is cited with approval in Eureka Lake Co. v. Yuba County, 116 U. S., 410.

In re Swan, 150 U. S., 637, the seizure by a constable of property in the hands of a receiver of a railroad company, appointed by Circuit Court United States, was held to be contempt, notwithstanding the constable's disclaimer of any purpose to commit contempt, and justified under the Dispensary law of South Carolina.

Ex-Parte Tyler, 148 U. S., 164.
In re Debs, 158 U. S., 568.

Debs and his confederates were adjudged in contempt for disobedience of an injunction order. The conduct of defendant in error was as much an infraction of the law as that of Debs and his associates. It prevented Wilson

from continuing to occupy the office and discharging the duties of Commissioner, which he was entitled to do as soon as the *supersedeas* was perfected.

Disavowal of intent to commit contempt purges only in cases "where the intention to injure constitutes the gravomen," such as libelous publications, etc.

In re Moore, 63 N. C., 408.

This Court can compel the defendant in error to make reparation.

Section 716, Rev. Stat., confers upon this Court full power to issue such writs as may be "necessary for the exercise of its jurisdiction."

It is not limited to a choice of means.

McCullough v. Maryland, 4 Wheat., 429.

The form of the writ must depend upon the circumstances of the case.

Goddard v. Ordway, 94 U. S., 672.
United States v. Child, 9 Wall., 661.
Knox v. Aspinwall, 24 How., 376.
In re Chitwood, 165 U. S., 443.
Am. Con. Co. v. Jacksonville, 148 U. S., 372.
Hardiman v. Hardiman, 4 How., 682.

A writ of restitution should be granted.

Commissioners v. Gorman, 19 Wall., 661.
Ex-Parte Milwaukee, 5 Wall., 188.

THOMAS N. HILL,
Of Counsel for Plaintiff in Error.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH.

No. 559.

Brief of Burton for P. C.

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JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

Filed Feb. 15, 1898.

FEBRUARY TERM, 1898.

S. OTHO WILSON, PLAINTIFF IN ERROR,

versus

THE STATE OF NORTH CAROLINA, BY Z. V. WALSER, ATTORNEY GENERAL, ON THE RELATION OF JOHN H. PEARSON, DEFENDANT IN ERROR.

Separate Brief for S. Otho Wilson.

STATEMENT OF FACTS.

This is an action in the nature of *quo warranto* to oust the plaintiff in error from his office of Railroad Commissioner of the State of North Carolina. His term of six years began April 1st, 1896. On the 24th August, 1897, the Governor sent to the plaintiff in error the following letter:

RALEIGH, August 24, 1897.

To S. OTHO WILSON, ESQ.,
Member of the Railroad Commission of North Carolina.

SIR: By section first of the Railroad Commission Act, ratified the fifth day of March, 1891, it is made the duty of the Governor to suspend from the office any Railroad Commissioner who shall be holder of "any stock or bond of any railroad company; or be the agent or employee of any such company; or have any interest *in any way* in such company;

or in case any of them shall become disqualified to act." It is alleged that a certain hotel property, known as Round Knob, is jointly owned by Major J. W. Wilson and Colonel A. B. Andrews; said Wilson being one of the Railroad Commissioners, and said Andrews being the First Vice-President of the Southern Railroad Company, and its active and general political manager for this State; that this property is of little or no value, except for the hotel, and worthless as a hotel except a railroad eating-house when so designated and patronized by the Southern Railroad Company; that this hotel has been closed for several years and has been producing no income for its owners; that you, either in your own name or that of your mother, entered into an agree ment with Messrs. Wilson and Andrews for a lease of this property for the purpose of establishing a railroad eating-house, and upon obtaining such agreement, you moved into the hotel in the month of May or June of this year and have been continuously since operating the property for your own pecuniary profit under said agreement; that previous to your rental or lease of this property the railroad company maintained an eating-house at Hickory and another at Asheville, for the accommodation of their various passenger trains going both west and east; that promptly upon your opening your hotel at Round Knob these eating-houses were discontinued, and both the western and eastern trains have been and still are stopped at your hotel for meals in pursuance of an understanding or agreement or contract between you of the one part and Messrs. Andrews and Wilson and the Southern Railroad Company of the other part.

These allegations have been made to me by many persons, and I think publication of them has been made in the public press. If they or the material substance of them be true—as to which I am expressing no opinion—then the questions to be determined are as follows:

First. Have you not become an agent or an employee of said railroad company in violation of law?

Second. Have you acquired *any interest in any way* in such company in violation of law?

Third. Have you become disqualified to act as a fair and impartial Judge or Commissioner?

Under the law the Governor not only has a right, but is required to suspend a Railroad Commissioner who commits a breach of the statute which has been cited, and this he may do, as in other cases of executive removals, without notice to the party interested; but I shall not pass judgment or decide this matter until you have a full opportunity to be heard by way of denial or explanation or justification or other defence. You will, therefore, please show cause in writing on or before Wednesday, the first day of September, 1897, at the executive office in Raleigh, why you should not be suspended from your said office and a report thereof made to the next General Assembly according to law. On the return day of this notice you will please make answer and proofs in writing and be there in person, or by counsel, at your election.

DANIEL L. RUSSELL,
Governor of North Carolina.

To which he replied:

RALEIGH, N. C., September 1, 1897.

HON. DANIEL L. RUSSELL,
Governor of North Carolina:

SIR: Replying to your notice of the 24th of August to show cause why I should not be suspended from the exercise of the duties of my office as Railroad Commissioner, I have this to say:

I have no interest in any way in the Southern Railway Company, or any other company or corporation over which the Railroad Commission has jurisdiction.

I am not in any way interested in the eating-house at Round Knob. I rented the house for my mother—the rent she pays being repairs to the house for the first year, with

an option to rent for five years at $250 per year. I have paid my board for myself and family, and have not and am not to receive one cent from the profits of the house. When at home I have rendered my mother such service as I could in managing the house, and the same services have been performed by other members of the family.

The arrangements to have the trains stopped at Round Knob for dinner was made by the railroad authorities upon their own motion, and is determinable by the Southern Railway Company at any time.

I have been owing my mother several hundred dollars borrowed money for several years, and I have purchased furniture and supplies for the Round Knob house and charged same to her in part payment of my debt.

I have no knowledge of the discontinuance of dinner-houses at Asheville and Hickory. They were not closed in consequence of an agreement with my mother to make Round Knob a dinner-house.

That a month before the notice of the Governor was received this affiant had seen Messrs. Wynne & Ellington, of this city, relative to renting a house for the purpose of bringing his family back to Raleigh. That since that time and before the notice of the Governor was received, the contract of renting was completed, and the affiant and his family are now living therein.

That affiant and family went to Round Knob for the summer because his wife had been in bad health and the family physician advised this change for the benefit of Mrs. Wilson.

Wherefore I say:

First. That I have not become agent or an employee of the Southern Railway Company.

Second. That I have not acquired any interest in any way in the Southern Railway Company.

Third. Not having any interest in any way in the Southern Railway Company, or any other company or corporation over which the Railroad Commission has jurisdiction, I have

not become disqualified to act as a fair and impartial Judge or Commissioner.

In support hereof I submit the statements of my mother, Mrs. Mary J. Wilson, Col. A. B. Andrews, Maj. J. W. Wilson, Messrs. Wynne & Ellington, and Dr. A. W. Goodwin.

And in addition to this sworn statement of facts, I respectfully refer to my record as Commissioner as proof conclusive that I am not, and have not been, influenced by any railway company, or any other company or corporation over which the Railroad Commission has jurisdiction.

I suppose that in due course of law, after reading the absolute and unqualified denials of this answer, supported and corroborated by the affidavits herewith filed, that the unsupported charges against me of a partisan press and malicious meddlers, will be immediately dismissed as without foundation and wilful and maliciously false. If I am mistaken in the view of your decision, then I demand to confront my accusers and cross-examine the witnesses against me.

Very respectfully,

S. Otho Wilson.

State of North Carolina—McDowell County.

To whom it may concern:

I see it stated that S. Otho Wilson, my son, a Railroad Commissioner for North Carolina, is charged with being an agent and employee of the Southern Railway Company, in that he is the lessee of the Round Knob Hotel on said Southern Railway.

I am a widow and have only one son. I have, while able, earned my own livelihood, and have been engaged in keeping hotels for the past thirty years, though not continuously.

I am the sole lessee of the Round Knob Hotel property, the same being rented from Maj. Jas. W. Wilson of Burke County.

My son, S. Otho Wilson, and his family have been guests of my hotel from May 1 to August 23, 1897, and have paid their board. My son has, while here, aided me in every way he could, by managing any affairs for us that he could. He has bought supplies, furniture, etc., and has paid for same out of receipts, in part, but largely with money he paid of his own, the same being a credit on notes held by me against him, which he owed me for money loaned him.

I hope he will never be so undutiful a son as not to look after the interests of a widowed mother.

(Signed) M. J. WILSON.

August 31, 1897.

A. W. Goodwin, M. D., being duly sworn, deposeth and says:

First. That his occupation is that of a practicing physician and a member of the Raleigh Academy of Medicine, residing in the city of Raleigh, N. C.

Second. That he is a regular physician in attendance upon the family of S. Otho Wilson.

Third. That the health of the wife of S. Otho Wilson has been feeble for the past twelve months.

Fourth. Owing to the condition of her health, I advised her removal to the mountains of North Carolina for the summer, which advice was followed.

Fifth. That I have been attending Mrs. Wilson recently, and that upon my advice (she intending to move to Raleigh about September 1) Mr. Wilson removed his family back there the past week.

(Signed) A. W. GOODWIN, M. D.
D. H. YOUNG, *C. S. C.*

September 1, 1897.

RALEIGH, N. C., August 31, 1897.

To whom it may concern:

On July 26, 1897, S. Otho Wilson applied to us for the rent of a house in West Raleigh, N. C., and we did not at the time have one, but he understood that we would have one soon near the college, and after several calls on us we rented him the house in West Raleigh, near the A. & M. College, which he now occupies.

Yours truly,

(Signed) WINNE, ELLINGTON & CO.,
Insurance and Real Estate Agents.

A. B. ANDREWS, being duly sworn, says:

That he is a citizen of Raleigh, N. C., and First Vice-President of the Southern Railway Company; that he owns one fourth interest in the Round Knob hotel property and the ten acres on which it is located, and that Maj. J. W. Wilson did own the other three-fourths; that the lease for the same to Mrs. M. J. Wilson, and affiant had no connection whatever with it, and did not know of it until after the contract was completed; that the arrangement for the passenger trains to stop at Round Knob was made because there was dissatisfaction with the dinner-house at Asheville, and the company was considering the propriety of building an eating-house somewhere on the line between Asheville and Old Fort. An additional reason for re-establishing the dinner-house at Round Knob (where it has been for most of the time for twelve years or more) was that, according to the schedule, it was more convenient for the passengers on both trains. The train from Salisbury arrived at Round Knob at 12:50 and the train from Asheville 12:55 P. M.; that so far as this affiant knows Mr. S. Otho Wilson has no connection with the hotel, and had nothing whatever to do with the lease of the hotel to his mother (who, as affiant knows, has long been engaged in keeping a boarding-house and hotel)

or with the arrangement by which the trains stop there for dinner; that Mr. S. Otho Wilson has no interest, legal, financial or otherwise, in the Southern Railway, or that he had any before or since he was elected one of the Railroad Commissioners, so far as the affiant has any knowledge or information, The same is true of Major Wilson.

(Signed) A. B. ANDREWS.

Sworn and subscribed to before me this 30th day of August, 1897.

(Signed) D. H. YOUNG, C. S C.

On the 23d day of September, 1897, the said Governor sent to the defendant the following communication:

RALEIGH, N. C., Sept. 23, 1897.

To S. OTHO WILSON, *Railroad Commissioner*.

SIR: Take notice that, after due investigation and consideration, I am convinced that you have violated the Railroad Commission law in some of the particulars mentioned in my letter to you August 24, 1897, and that you have not only violated said Act in the specifications set out in said Act, but that you have otherwise, within the meaning and intent and words of said Act, "become disqualified to act."

Now, therefore, in obedience to the duty imposed upon me by said Act of Assembly, I do hereby suspend you from the office of Railroad Commissioner—such suspension to continue until the quest on of your removal or restoration shall be determined "by a majority of the General Assembly, in joint session."

The fact of your suspension, together with the reasons therefor, and the evidence, documents and information connected therewith, will be reported to the next General Assembly.

You will further take notice that under and by virtue of the powers conferred and the duties imposed by the law upon the Chief Executive, I have appointed John H. Pearson,

Esq., of the county of Burke, to fill the vacancy created by your suspension.

Inasmuch as you are understood to deny the power of the Executive to suspend you from office, as provided by the statute, I have requested Mr. Pearson to make demand on you for the possession of the office, and upon your refusal, to bring action therefor, to the end that the title to the office may be judicially determined.

D. L. RUSSELL, *Governor.*

The plaintiff in error declined to surrender his office, and this action was brought October 5, 1897, to try the title thereto.

The plaintiff in error denied in his answer generally and specially the matters alleged against him, and set up the various defences set out in No. 558 (the J. W. Wilson case).

The case came on for trial in the Superior Court. At the conclusion of the reading of the pleadings, the defendant (plaintiff in error) tendered the following issues and demanded a trial by jury:

1. Did the defendant lease the Round Knob Hotel?
2. Had or has he any interest therein?
3. Has the defendant ever operated said property for his own pecuniary profit?
4. Are the trains of the Southern Railway stopped at said hotel for meals in pursuance of any understanding, agreement or contract with him?
5. Is the defendant, or was he on the first of September, 1897, an agent or employee of the Southern Railway Company, in violation of law?
6. Has the defendant acquired any interest in any way in the Southern Railway Company, in violation of law?
7. Has the defendant become disqualified to act as a fair or impartial Judge or Commissioner, or has he in any way become disqualified to act?
8. Did the defendant demand of the Governor that he be

confronted with his accusers, and that he have an opportunity to hear and cross-examine the witnesses against nim?

9. Was said denial refused?

10. Was any evidence produced?

The Court declined to submit these issues, or any issues, and the plaintiff in error excepted.

Thereupon the plaintiff below moved for judgment upon the complaint and answer. Motion allowed and the defendant (plaintiff in error) excepted. This ruling was sustained in the Supreme Court.

The other facts appear in the common brief.

R. O. BURTON,
Attorney for Plaintiff in Error.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH.